IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.MC.No. 544 of 2007()

CC.263/2004 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOYILANDY

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PETITIONER: PETITIONERS

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1. ALIKOYA, S/O. MOOSA,
   BAITHUL SAFA, ATHOLI-KOLAKKAD P.O.,
   KOZHIKODE DISTRICT.

2. SHAMEER, S/O. ALIKOYA,
   BAITHUL SAFA, ATHOLI - KOLAKKAD P.O.,
   KOZHIKODE DISTRICT.

3. RASHID, S/O. ALIKOYA,
   BAITHUL SAFA, ATHOLI - KOLAKKAD P.O.,
   KOZHIKODE DISTRICT.

BY ADV. SRI.M.MUHAMMED SHAFI

RESPONDENTS: RESPONDENTS

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. MUNEERA, D/O. HUSSAINA,
   V.P.HOUSE, ACHANKANDY PARAMBU, PUTHIYARA P.O.,
   PUTHIYAPALAM, KOZHIKODE.

BY P.P. SRI.GIKKU JACOB.
BY ADV. SRI.K. ABDUL JAWAD (R2)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 544 OF 2007

Dated this the 7th day of March, 2007

ORDER

The petitioners are accused 1 to 3 in a prosecution initiated under Secs.498A and 406 read with Sec.34 of the IPC. Proceedings were initiated on the basis of a complaint filed by the 2nd respondent herein. That complaint filed before the learned Magistrate was referred to the police under Sec.156(3) of the Cr.P.C. A crime was registered and after investigation, the final report was filed before the learned Magistrate. Altogether, there were four accused shown in the private complaint and the F.I.R. registered. The petitioners 1 to 3 herein are accused 1 to 3. They are the husband of the 2nd respondent and sons of the 1st petitioner in an earlier marriage of his. The 4th accused shown in the F.I.R./ complaint was a neighbour.

2. The police, after investigation, filed a final report dropping the 4th accused from the array of parties and arraying the petitioners as accused 1 to 3. Cognizance was

taken by the learned Magistrate. The petitioners have already appeared before the learned Magistrate, it is submitted.

3. The petitioners have now come to this Court along with the 2nd respondent. They submit that the disputes have already been settled between the parties amicably. Annexure-A2 agreement has been entered into between the 1st petitioner – husband and the 2nd respondent – wife. All the disputes have been harmoniously settled. The spouses have resumed cohabitation. In these circumstances, continuance of the prosecution has now become an unnecessary irritant in the relationship between the parties. It is prayed, in these circumstances, that the powers under Sec.482 of the Cr.P.C. may be invoked and the prosecution against the petitioners may be quashed.

4. The 2nd respondent has entered appearance through counsel. The 2nd respondent confirms that the matter has been settled and the 2nd respondent has compounded the offences allegedly committed by the petitioners. A joint statement has been filed duly signed by the petitioners and the 2nd respondent

and counter signed by their respective counsel to satisfy the court that such composition has been effected. The learned counsel for the 2nd respondent vouches for the signature of the 2nd respondent in the joint application for composition.

5. I am satisfied from the material placed before me that the parties have settled their disputes and the 2nd respondent/ complainant has compounded the offences allegedly committed by the petitioners. I am further satisfied that this being a matrimonial dispute, the prayer for premature termination of the proceedings has got to be considered favourably if this Court has such an option available in law. I do further note that the offence under Sec.498A of the IPC is not compoundable; but the counsel relies on the decision in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386). I am satisfied that following the dictum in the said case, reckoning this as an exceptional case where the interests of justice transcends the interests of mere law, the prayer for quashing of proceedings on the basis of the facts which have emerged subsequently can be accepted.

6. In the result:

(i) This Crl.M.C. is allowed.

(ii) C.C.No.263/04 pending before the learned Judicial Magistrate of the First Class, Koyilandy, is hereby quashed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge